IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3045 of 2005
With
CRIMINAL MISC.APPLICATION No. 11546 of 2005
In
CRIMINAL MISC.APPLICATION No. 3045 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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VINESH BHAGWAN DARIANANI - Applicant(s)
Versus
STATE OF GUJARAT & 8 - Respondent(s)

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Appearance :
MR NILESH PANDYA for Petitioners.
MR MUKESH PATEL, APP for Respondent No. 1 – State.
MR P M THAKKAR, SENIOR ADVOCATE WITH MR SP

MAJMUDAR for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 27/10/2005

COMMON ORAL JUDGMENT

1.Cri. Misc. Application No. 3045 of 2005 is filed by the petitioners – original accused praying for quashing and setting aside the proceedings of Criminal Case No. 4386 of 2004 pending before the learned Chief Judicial Magistrate, Vadodara.

2.Cri. Misc. Application No. 11456 of 2005 is filed by the applicant, namely, Ritu Vinesh Darianani, original respondent No. 2 in Cri. Misc. Application No. 3045 of 2005 for vacating the interim relief granted by this Court on 01.04.2005 staying further proceedings of Criminal Case No. 4386 of 2004 pending in the Court of learned Chief Judicial Magistrate,

Vadodara.

3.It is the case of the petitioners – original accused that they are not citizens of India and they have never resided in India and they are having citizenship of Spain for which they are holding necessary Passports. The petitioner No. 1 i.e. Vinesh Bhagwan Darianani had come to India along with petitioner No. 2, for the purpose of his marriage with the respondent No. 2. The petitioner No. 1 got married with the respondent No. 2 on 25.01.2003. It is the case of the petitioners that for the purpose of said marriage, all the expenses were borne by the petitioners and all the bills of the hotel etc. have been paid by the petitioners. It is also the case of the petitioners that after the marriage ceremony was over, the petitioner No. 1 had applied for visa for the respondent No. 2 and for that purpose, the respondent No. 2 has

managed to obtain Marriage Certificate from the Registrar of Marriages, Vadodara and the same was produced before the Visa authorities and subsequently, the respondent No. 2 had left India for Spain with the petitioner No. 1 on 14.02.2003 and she was residing with the petitioner No. 1 in Spain. It is also the case of the petitioners that after the respondent No. 2 came to Spain, all necessary formalities were carried out by the petitioner No. 1 for obtaining resident permit for the respondent No. 2 and the marriage of the petitioner No. 1 and respondent No. 2 was also registered as per the local laws of Spain before the authority for registration of marriages. A separate Agreement was also executed by the petitioner No. 1 and respondent No. 2 as per the local laws of Spain.

4.It is also the case of the petitioners that

within short period of coming to Spain, the respondent No. 2 started behaving abnormal and not responding as a normal wife and always giving lame excuses and due to such non-cooperation of the respondent No. 2, it was not possible for the petitioner No. 1 and respondent No. 2 to live together as husband and wife and after some time, the respondent No. 2 had left the house of the petitioners and went to her matrimonial uncle who was residing at Tenerife in Spain. Since the respondent No. 2 has not cooperated with the petitioners and as it was not possible for them to live together, the petitioner No. 1 thought it fit and just to have judicial separation and accordingly, application was made by the petitioner No. 1 in the Court of Spain. However, the Trial Court of Spain dismissed the application of the petitioner No. 1. Against the said order, the petitioner No. 1 had

preferred the Appeal before the Appellate Court of Spain and accordingly, the Appellate Court of Spain allowed the said appeal of the petitioner No. 1 and passed order for judicial separation of the petitioner No. 1 and the respondent No. 2.

5.It is further stated in the petition that subsequently, the respondent No. 2 had left Spain and came back to India and after coming to India, the respondent No. 2 has filed Criminal Case No. 4386 of 2004 against the petitioners and one Pari Melwani, under the provisions of Sections 498-A, 406, 504, 506(2) and 114 of the Indian Penal Code and made vague allegations in the said case. The learned Chief Judicial Magistrate, Vadodara by his order dated 02.07.2004 issued process against the petitioners for the said offences. Being aggrieved and dissatisfied by the said order,

the petitioners / original accused have filed the present petition before this Court praying for quashing and setting aside the criminal proceedings filed by the respondent No. 2 against the petitioners.

6.Mr. Nilesh Pandya, learned advocate appearing for the petitioners has submitted that the Trial Court had no jurisdiction to initiate any proceedings against the petitioners as all the petitioners are not citizens of India and therefore the complaint under the provisions of the I.P.C. is not maintainable against the petitioners. In support of this submission, he invited the Court's attention to the provisions contained in Section 188 of the Criminal Procedure Code. It deals with offence committed outside India. It says that when an offence is committed outside India – (a) by a citizen of India, whether on the high seas or

elsewhere; or (b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found. The proviso however says that notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government. Mr. Pandya has therefore submitted that Section 188 prohibits the learned Trial Court from taking any cognizance of the offence which has not been committed in India.

7.Mr. Pandya has further invited the Court's attention to the provisions contained in Section 4 of the Indian Penal Code. This Section extends the applicability of code to extra-territorial offences. It says that the

provisions of this code apply also to any offence committed by any citizen of India in any place within and beyond India, and any person on any ship or aircraft registered in India wherever it may be. Mr. Pandya has further submitted that since the petitioners are not citizens of India and offences are not committed in India, the provisions of I.P.C. would not apply to the petitioners. In support of this submission, he relied on the decision of the Hon'ble Supreme Court in the case of **Central Bank of India Ltd. V/s. Ram Narain, AIR 1955 S.C. 36** wherein it is held that the language of Section 4 of I.P.C. And Section 188 of Cr.P.C. plainly means that if at the time of the commission of the offence, the person committing it is a citizen of India, then even if the offence is committed outside India, he is subject to the jurisdiction of the courts in India. The rule enunciated in the sections is

based on the principle that qua citizens the jurisdiction of Courts is not lost by reason of the venue of the offence. If, however, at the time of commission of the offence the accused person is not a citizen of India, then the provisions of these sections have no application whatsoever.

8.Mr. Pandya has further submitted that since no offence has been committed as per the complaint within the jurisdiction of India, the process issued by the Trial Court appears to be the result of non-application of mind and without jurisdiction. Even considering the allegations made in the complaint itself, no cause of action has arisen in India for the so-called offences alleged by the respondent No. 2 in the said criminal case and, therefore, the process issued by the learned Chief Judicial Magistrate, Vadodara is without jurisdiction.

Even as per the complaint, the respondent No. 2 has not made out any case with regard to the harassment of the respondent No. 2. The respondent No. 2 has involved all the petitioners in the said complaint only with a view to harass the petitioners and with malafide intentions to extort money from the petitioners. In support of this submission, he relied on the decision of the Hon'ble Supreme Court in the case of **Y. Abraham Ajith and Others V/s. Inspector of Police, Chennai and another, [2004] 8 S.C.C. 100** wherein it is held that the crucial question is whether any part of the cause of action arose within the jurisdiction of the Court concerned. In terms of Section 177 Cr.P.C., it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused. In the case before the Hon'ble Supreme Court, the

complainant herself left the house of the husband on 15.04.1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at place C. That being so, the logic of Section 178(c) Cr.P.C. relating to continuance of the offences cannot be applied. The Court, therefore, held that the inevitable conclusion is that no part of cause of action arose in the city Chennai and, therefore, the Magistrate concerned had no jurisdiction to deal with the matter.

9.Mr. Pandya has further submitted that the respondent No. 2 has filed absolutely false, frivolous and vexatious complaint against the petitioners. The learned Trial Judge has not applied his mind while issuing process against

the petitioners. All the ornaments and other valuables have already been handed over to the matrimonial uncle of the respondent No. 2 who is residing at Tenerife in Spain and separate document has also been executed for having received the said ornaments and other important valuable gifts from the petitioners. Despite this fact, the respondent No. 2 has made baseless and vague allegations in the complaint which are contrary to the documents produced and signed by the matrimonial uncle of the respondent No. 2. All the marriage expenses were borne by the petitioners and for that purpose, various bills are also produced on record along with this petition. This fact itself suggests that the respondent No. 2 has developed a totally false story just to file the complaint. The Trial Court has completely ignored the fact that at no point of time any demand of dowry was made by the petitioners.

There is also no specific allegation with regard to the so-called breach of trust. The petitioners have not given any threat to the respondent No. 2. On the contrary, the judicial separation has already taken place between the parties as per the local laws of Spain. He has further submitted that though the decree of judicial separation has already been granted by the competent Court of Spain, the respondent No. 2 has not purposefully disclosed the said facts in the complaint. It is, therefore, evident and clear that the complaint is filed by the respondent No. 2 with malafide intentions and ulterior motives. He has further submitted that the Trial Court should have considered that no ingredient to constitute the alleged offences said to have been committed by the petitioners are found in the complaint and since the respondent No. 2 has developed a false story and, therefore, on the ground of

suppression of facts, the present complaint is required to be quashed and set aside. Mr. Pandya has further submitted that the petitioner Nos. 4,6 & 7 are already married and they are residing separately with their family. Despite this fact, the respondent No. 2 has made baseless allegations in the complaint that all are residing in one family. The respondent No. 2 has made baseless and vague allegations against the petitioner No. 8 who is a sister of petitioner No. 1 and the same are very disgusting and shocking that one in wildest dream cannot imagine such things. This would show the moral values and attitude of the respondent No. 2. Right from the first day, the respondent No. 2 never responded as a normal wife and was always giving lame excuses and because of such attitude of the respondent No. 2, the judicial separation took place between the parties in Spanish Court. All

these aspects of the matter have not been taken into consideration by the learned Chief Judicial Magistrate while issuing process against the petitioners. In such matters, what should be the role of the Court while considering the petition for quashing under Section 482 of Cr.P.C., has been succinctly explained by the Hon'ble Supreme Court in **Pepsi Foods Limited and Another V/s. Special Judicial Magistrate and Others, (1998) 5 S.C.C. 749** wherein the Hon'ble Supreme Court with reference to *Bhajanlal's case (1992 Supp (1) SCC 335)* has observed that guidelines laid therein as to whether the Court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying rigid formula to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any

court or otherwise to secure the ends of justice. It is well settled that these powers have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers.

10.The Hon'ble Supreme Court has also made certain observations though in a slightly different context, in the case of **G.V. Rao V/s. L.H.V. Prasad and others, 2000 (3) S.C.C. 693** which are very apt for determining the approach required to be kept in view in a matrimonial dispute by the Courts. It was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous

crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their “cases” in different courts.

11.Based on the aforesaid judgments, Mr. Pandya has strongly urged before the Court that the process issued by the learned Magistrate is contrary to the statutory provisions as contained in Cr.P.C. as well as I.P.C. and also

against the settled legal propositions. He has therefore submitted that this is a fit case where this Court should exercise its inherent jurisdiction under Section 482 of Cr.P.C. and quash the complaint.

12.Mr. P.M. Thakkar, learned Senior counsel appearing with Mr. S.P. Majmudar, learned advocate for the respondent No. 2 has submitted that the whole base of the arguments canvassed by Mr. Pandya, learned advocate appearing for the petitioners is erroneous as it proceeded on the footing that no offence has been committed in India. This, on the face of it, is not correct and contrary to the facts and evidence on record. He has submitted that the petitioners themselves in this petition have stated that marriage mentioned in the petition was solemnized in India and thereafter, for some period they stayed in India. The

petitioners may not be citizens of India nor do they have permanent residence in India but after the marriage, the petitioners including petitioner No. 1 had stayed in India and respondent No. 2 after the marriage stayed with the petitioner No. 1 as his wife. The marriage took place on 25.01.2003 at Vadodara and was also registered with Registrar of Marriages at Vadodara. After the marriage, the respondent No. 2 went to Spain to stay with the petitioner No. 1 and she was met out physical and mental cruelty by the petitioners. Though the respondent No. 2 got married with the petitioner No. 1, he refused to have any matrimonial relations with the respondent No. 2. Though the petitioner No. 1 was the husband of the respondent No. 2, he refused to cohabit with the respondent No. 2 or consummate marriage. He has further submitted that right from the day when the petitioners took the

respondent No. 2 to Spain, they tortured and tormented her in a very cruel manner. Ultimately, they compelled the respondent No. 2 to leave the house and then they compelled the respondent No. 2 even to leave Spain and go to India. The respondent No. 2 was under tremendous shock. Initially, while in Vadodara, when the petitioners meted out harassment to the respondent No. 2, she thought probably because they were placed in a new situation, the petitioners were trying to force the respondent No. 2 to submit their demands of dowry but the harassment persisted and kept on increasing and ultimately, the respondent No. 2 was driven out by the petitioners. The parents of the respondent No. 2 were also under shock and ultimately, she was left with no other option but to file complaint under Section 498-A, 406, 502, 114 etc. of I.P.C.

13.Mr. Thakkar has further submitted that the plain reading of the complaint would reveal that the petitioners had committed the offences mentioned in the complaint and there are strong chances of the respondent No. 2 succeeding in the said complaint. There is strong prima facie evidence against the petitioners. The learned Chief Judicial Magistrate had rightly issued process. The respondent No. 2 should be given an opportunity to prove her case by leading proper evidence. This is not a case which can be quashed at the threshold and depriving the respondent No. 2 of an opportunity to prove her case. The petitioners have ruined the life of the respondent No. 2 and the respondent No. 2 was totally broken, physically as well as mentally. The petitioners have compelled the parents of the respondent No. 2 to incur huge expenses for marriage beyond their capacity and they were

also compelled to give expensive gifts over and above huge amount in cash given to them and their greed was never satisfied. The petitioners started right from day one after marriage, continued the same when they went to Spain and they kept on threatening the respondent No. 2 even after she came to India. The Court at Vadodara also have jurisdiction to entertain, try and decide the complaint.

14.Mr. Thakkar has further submitted that the petitioners have made certain false, frivolous and bald allegations in the present petition and they are deliberately trying to malign the respondent No. 2. The respondent No. 2 tried level best to accept the family of the petitioners as her own family and she tried to do everything that she could be a part of their family, inspite of the fact that the respondent No. 2 was in a totally new environment and

amongst complete strangers. However, all her efforts were brutally repelled by the petitioners by inflicting upon the respondent No. 2 tremendous mental and physical cruelty. The respondent No. 2 was never willing to severe relations with the petitioners. She was trying and hoping that as the time passes things would settle down. However, the petitioners were bent upon harassing her for dowry and hence, they forced the respondent No. 2 to leave the house. They have actually managed to first, leave the respondent No. 2 at her matrimonial Uncle's place in Spain and from there, compelled her to leave for India. After the respondent No. 2 left for India, the petitioner No. 1 filed petition for judicial separation in Spain and suppressing the above fact, caused the notice to be served at her matrimonial Uncle's place in Spain and ultimately succeeded in getting orders in their

favour. Mr. Thakkar has further submitted that the demand of dowry was made by the petitioners at Vadodara. Moreover, even after reaching Vadodara, the parents of the respondent No. 2 tried to sort out the matter. However, the in-laws behaved in a weird manner and used abusive language against the parents of the respondent No. 2. They have also threatened that in no case, they would take the respondent No. 2 back to Spain. The offence alleged in the complaint by the respondent No. 2 are continuing offences and they have been committed in the local jurisdiction of the Court at Vadodara. If the entire bundle of facts are considered, it would be amply clear that the Court at Vadodara has jurisdiction to try the said offences.

15.Mr. Thakkar has further submitted that various articles constituting “stridhana” of the respondent No. 2 have not been given to her by

the petitioners. The details of the list of such articles are given at para 3 & 4 of the complaint. The criminal breach of trust is committed by the petitioners in not returning these articles to the respondent No. 2. These articles have never been handed over to the matrimonial uncle of the respondent No. 2 as averred by the petitioners. Simply because some inconvenience would be caused to the petitioners in coming to Vadodara for the purpose of trial, it cannot be a ground for quashing the complaint. The petitioners in a calculated manner have committed fraud on the respondent No. 2 and have spoiled her life and hence, they ought not to go scot-free. The petitioners have abused the process of law by filing the present petition for quashing of the complaint. The petitioners have collectively tried to ruin the life of the respondent No. 2. The level of cruelty met out to the respondent

No. 2 was tremendous and ultimately, there was a danger to her life. Before marriage, the respondent No. 2 was lured by the petitioners. Mr. Thakkar has further submitted that in the petition itself, there are several contradictory statements and misstatements. On the one hand the petitioners admit that there is cruelty meted by them but say the Court at Vadodara has no jurisdiction to try the same and on the other hand, they say that they are not responsible for the alleged cruelty. In view of these contradictory statements which are apparent on reading the petition, the petition deserves to be dismissed outright.

16.Mr. Thakkar has further submitted that as per the law laid down by the Hon'ble Supreme Court that while entertaining a petition under Section 482 of Cr.P.C., the Court is not supposed to minutely scrutinize each and every

averment made in the complaint. If on broad perusal of the facts, prima facie an offence is made out, the Court ought not to entertain the petition under Section 482 of Cr.P.C. Annexures caused to the petition can also not be considered by this Court as evidences as per the law laid down by the Hon'ble Supreme Court. The entire complaint is required to be read as a whole and if that is done, offences against all the accused are completely made out.

17.With regard to the issues raised by Mr. Pandya about the jurisdiction and petitioners not being citizens of India and, therefore, the provisions of Cr.P.C. as well as I.P.C. are not applicable to the petitioners, Mr. Thakkar has invited the Court's attention to Chapter XIII of the Cr.P.C. which deal with jurisdiction of the criminal Courts in inquiries and Trials. Section 177 talks about ordinary place of

inquiry and trial which says that every offence shall ordinarily be inquired and tried by a Court within whose local jurisdiction it was committed. However, there are certain exceptions to this general rule. Section 178 talks about place of inquiry or trial. It says that when it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is continuing one, and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. Mr. Thakkar has, therefore, submitted that as per Section 178 (b) & (c), the offence has been committed partly within the local jurisdiction of Court at Vadodara and even the offence committed

abroad but it continued within the local jurisdiction at Vadodara. Section 179 deals with offence triable where act is done or consequences ensues. It says that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

18.Mr. Thakkar has, therefore, submitted that even if the offence is said to have been committed in Spain, its consequence ensued in Vadodara and hence, the Court at Vadodara is having the jurisdiction to entertain the complaint filed by the respondent No. 2. In support of his submission, he relied on the decision of the Hon'ble Supreme Court in the case of **Mohan Baitha & Ors. V/s. State of Bihar**

and Another, 2001 SAR (Criminal) 441 / 2001 (4) S.C.C. 350 wherein the complainant, Surendra Rajak, was the father of the deceased Kalpana and in the complaint petition, he narrated the chain of events starting from 09.06.1994, the date on which Kalpana was married to Binod Kumar till 12.06.1997, the date on which the father received a telephonic message that Kalpana had received burn injuries, while preparing milk for Kalpana's daughter and ultimately Kalpana died on 29.06.1997. On these facts, the Hon'ble Supreme Court has observed that under Section 220 of the Code of Criminal Procedure, offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of acts, so as to form the same transaction. The expression 'same transaction from its very nature is incapable of an exact definition. It is not intended to be

interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria. Bearing in mind the aforesaid principles and on scrutiny of the narration of events in the F.I.R. as well as

the complaint, the Court did not find any infirmity with the conclusion of the High Court in applying Section 220 of the Criminal Procedure Code to the case in hand and in coming to the conclusion that the jurisdiction of the Magistrate at Bhagalpur cannot be held to have been ousted for the offence under Section 304B of IPC.

19.Mr. Thakkar has invited the Court's attention to the provisions contained in Section 181 of Cr.P.C. which deals with place of trial in case of certain offences. Section 181 (4) says that any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject to the offence was received or retained, or was required to be returned or accounted for, by

the accused person. As per this sub-section, the 'stridhana' which was retained by the petitioners was required to be returned or accounted for at Vadodara and hence, the Court at Vadodara has the jurisdiction to entertain the said complaint. The retention of the 'stridhana' by the petitioners is amounting to criminal breach of trust. In support of this submission, he relied on the decisions of the Hon'ble Supreme Court in the case of (i) **Ammathayee alias Perumalakkal and another V/s. Kumaresan alias Balakrishnan and others, AIR 1967 S.C. 569,** (ii) **Pratibha Rani V/s. Suraj Kumar and another, (1985) 2 S.C.C. 370** and (iii) **Rashmi Kumar (Smt) V/s. Mahesh Kumar Bhada, (1997) 2 S.C.C. 397**.

20.In all these cases, the Court was mainly concerned with the concept of stridhana and wife's absolute right over such property. When

the wife entrusts her stridhana property with the dominion over that property to her husband or any other member of the family and the husband or such other member of the family dishonestly misappropriates or converts to his own use that property or willfully suffers any other person to do so, he commits criminal breach of trust. The essential ingredients for establishing an offence of criminal breach of trust as defined in Section 405 and punishable under Section 406 IPC with sentence for a period up to three years or with fine or with both, are; (i) entrusting any person with property or with any dominion over property; (ii) the person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing of that property or willfully suffering any other person so to do in violation of any direction of law prescribing

the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust.

21.Whether the stridhana property has been returned to the wife can be established during the course of trial and on the basis of the averments made in the petition, the issue cannot be decided by the Court while dealing with quashing petition under Section 482 of Cr.P.C. At the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint or in the Charge-sheet filed under Section 173, as the case may be. It is not open for the Court to sit or appreciate the evidence at that stage by making reference to the material and come to the conclusion that no prima facie case is made out to proceed further in the matter. It is equally settled law that it is open to the

Court, before issuing process, to record the evidence and on consideration of the averments made in the complaint and the evidence thus adduced, it is required to find out whether an offence has been made out. A finding that such an offence has been made out and after taking cognizance thereof, process would be issued to the respondent to take further steps in the matters. If it is a charge-sheet filed under Section 173 of the Code, the fact stated by the prosecution in the charge-sheet on the basis of the evidence collected during investigation, would disclose the offence for which cognizance would be taken by the Court to proceed further in the matter. Thus, it is not the province of the Court at that stage to embark upon and sift the evidence to come to the conclusion whether offence has been made out or not. The Court has further held that the High Court should sparingly and cautiously exercise the power

under Section 482 of Cr.P.C. to prevent miscarriage of justice. The High Court would be loath and circumspect to exercise its extraordinary power under Section 482 of the Code and under Article 226 of the Constitution. The Court would consider whether the exercise of the power would advance the cause of justice or it would tantamount to abuse of the process of the court. Social stability and order require to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon the exercise of the inherent power vested in the Court. Keeping this broad principles in mind, Mr. Thakkar has submitted that in the present case, if the complaint is quashed on the ground that the Court at Vadodara has no jurisdiction, the respondent No. 2 has no other alternative and ultimately, it would amount to

miscarriage of justice.

22.Mr. Thakkar has further relied on the decision of this Court in the case of **Raginiben Gunvantsinh Tank V/s. Gunvantlal Keshavlal Tank & Ors., 2003 (3) G.L.R. 2027** wherein this Court has taken the view that a deserted wife residing with her parents immediately after separation or desertion is supposed to receive her properties from her in-laws smoothly and conveniently. The attempt to misappropriate such property is condemned by this Court and the Apex Court in number of decisions in the proceedings initiated before the Criminal Court or Civil Court under relevant laws. Why a wife should be asked to prosecute husband in a Court located in the area or place which she might have been compelled to leave merely because the wife has not prayed any relief either under Sec. 26 or Sec. 27 of Hindu

Marriage Act ? The Court has further held that where the accused is required to return her streedhan and personal property, she has rightly invoked the jurisdiction vested with the Court by referring to sub-Section (4) of Section 181 of Cr.P.C. The Court has, therefore, taken the view that sub-Section (4) of Section 181 of Cr.P.C. is an exception to the ordinary place of enquiry and trial made in Section 177 of Cr.P.C.

23.Mr. Thakkar has further submitted that whether petitioners are citizens of India or not is the question of fact which can be decided during the course of trial, by leading necessary evidence in this regard and by putting relevant questions to the accused persons. In this connection, he relied on the decision of the Hon'ble Supreme Court in the case of **Mohd. Malek Mondal V/s. Pranjal Bardalai and another,**

(2005) 10 S.C.C. 608 wherein the Court was concerned as to whether Section 42 of NDPS Act is complied or not. In this context, the Court has observed that whether Section 42 of the NDPS Act has been complied or not being a question of fact has to be gone into on appreciation of evidence that may be adduced before the Special Judge. Prima facie, the High Court has come to the conclusion that there has been compliance. This is not the stage for in-depth examination of this question. The contention that there is no material against the petitioner since the only material on record was inadmissible retracted statement allegedly made by the co-accused Dilip Das, also cannot be accepted, at this stage, when only cognizance has been taken and the petitioner is still to be interrogated. The question about corroborative nature of evidence may also have to be gone into at the

appropriate stage. The only other contention urged is about the lack of power of the Special Judge to issue warrant of arrest. The Court has further held in this case that wide extraordinary power of quashing vested in the High Court is to be exercised sparingly and with caution and not to stifle legitimate prosecution. Such a power is required to be exercised in a case where the complaint does not disclose any offence and it is frivolous, vexatious or oppressive. At that stage, there cannot be meticulous analysis of the case.

24.Mr. Thakkar has further submitted that even if the petitioners are considered to be not the citizens of India, in that case also, as per the provisions contained in Section 2 of I.P.C., they are liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of

which, he shall be guilty within India. While interpreting this Section, the Hon'ble Supreme Court in the case of **Mobarik Ali Ahmed V/s. The State of Bombay, AIR 1957 S.C. 857** has held that the use of the phrase “every person” in S. 2 as contrasted with the use of the phrase “any person” in S. 3 as well as S. 4(2) of the Code is indicative of the idea that to the extent that the guilt for an offence committed within India can be attributed to a person, every such person without exception is liable for punishment under the Code. The phrase “within India” towards the end of S. 2 cannot be read with the phrase “every person”. The plain meaning of the phrase “every person” is that it comprehends all persons without limitation and irrespective of nationality, allegiance, rank, status, caste, colour or creed. This section must be understood as comprehending every person without exception barring such as may be

specially exempt from Criminal proceedings or punishment thereunder by virtue of the Constitution or any statutory provisions or some well-recognized principle of international law, such as foreign sovereigns, ambassadors, diplomatic agents and so forth, accepted in the municipal law. Mr. Thakkar has, therefore, submitted that since the offence has been committed partly in India, the petitioners though they are not citizens of India, they are liable to be prosecuted in India by virtue of Section 2 of I.P.C.

25.Mr. Thakkar has further submitted that the decisions relied upon by Mr. Pandya, learned advocate appearing for the petitioners are not applicable looking to the facts of the present case. In *Y. Abraham Ajith and Others V/s. Inspector of Police, Chennai and another (Supra)* the Court ultimately directed the

complaint to be returned to respondent No. 2, who if so chooses, may file the same in the appropriate Court to be dealt with in accordance with law. In that case, both the Courts are in India and hence, the respondent No. 2 can file the complaint before the other Court in India. However, in the present case, there is no such possibility as there is no other Court in India where the present complaint can be tried and investigated.

26.Mr. M.A. Patel, learned Assistant Public Prosecutor has also opposed the petition filed by the petitioners – original accused. He endorsed the arguments taken by Mr. P.M. Thakkar. In addition to these arguments, he relied on the decision of the Hon'ble Supreme Court in the case of **Ajay Agrawal V/s. Union of India and others, AIR 1993 S.C. 1637** wherein the Court has taken the view that a conspiracy

is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are agreed to be finalised or done, attempted or even frustrated and vice versa. Thus sanction

under Section 188 is not a condition precedent to take cognizance of the offence. If need be it could be obtained before trial begins. In the instance case, conspiracy for cheating a Bank was initially hatched in India in confabulation with NRI. Since the offences have been committed during the continuing course of transaction culminated in cheating Bank in India the need to obtain sanction for various offences under proviso to S. 188 is obviated. Therefore, there is no need to obtain sanction from Central Government.

27.Mr. Patel has further relied on the decision of the Hon'ble Supreme Court in the case of **Om Hemrajani V/s. State of U.P. And Another, (2005) 1 S.C.C. 617** wherein the Hon'ble Supreme Court has held that the Scheme underlying Section 188 is to dispel any objection or plea of want of jurisdiction at the behest of a

fugitive who has committed an offence in any other country. If such a person is found anywhere in India, the offence can be inquired into and tried by any court that may be approached by the victim. The victim who has suffered at the hands of the accused on a foreign land can complain about the offence to a court, otherwise competent, which he may find convenient. The convenience is of the victim and not that of the accused. It is not the requirement of Section 188 that the victim shall state in the complaint as to which place the accused may be found. It is enough to allege that the accused may be found in India. Mr. Patel has, therefore, submitted that the complaint cannot be quashed merely on the ground that the Court at Vadodara has no territorial jurisdiction to entertain the said complaint or that the petitioners are not the citizens of India. Since the complaint prima

facie discloses the offence and a part of the offence has been committed in India and law is well settled on the issue regarding quashing under Section 482 of Cr.P.C., the present petition does not deserve any consideration by this Court and it is, therefore, required to be dismissed summarily.

28.After having heard the learned advocates appearing for the respective parties, after having gone through the complaint, averments made in the petition as well as affidavit-in-reply and documents attached therewith and after having examined the relevant statutory provisions and the case law on the subject referred to and relied on, the Court is of the view that it is not a fit or appropriate case where the complaint is to be quashed at the very threshold while exercising the inherent powers under Section 482 of the Criminal

Procedure Code. Submissions made by Mr. Thakkar appearing for the original complainant / respondent No. 2 – wife and the averments in the complaint are sufficient enough to make out a prima facie offence committed in India by the petitioners / original accused and their challenge to the maintainability of complaint on the ground of jurisdiction or not being citizens of India does not appeal to the Court or inspire its confidence to quash the complaint at this stage.

29.The facts emerging from the complaint are that the marriage between the petitioner and the respondent No. 2 was solemnized at Vadodara. They stayed in India for some time. There is a dispute with regard to matrimonial relations – cohabitation or consummation of marriage. There are enough averments and allegations

about continuous mental and physical torturing of the respondent No. 2 by all the accused. The 'stridhan' which is required to be returned to the respondent No. 2 in India is alleged to have not been returned. The accused are alleged to have imparted threats on telephones to the respondent No. 2. On these factual averments made in the complaint, the Court is of the firm opinion that the complaint deserves full-fledged trial and without leading oral as well as documentary evidence, it is not possible to arrive at the conclusion that the accused have not committed any offence in India.

30.The Court is not much convinced about the petitioners' challenge to the complaint on the ground of jurisdiction. It is true that Section 177 of Cr.P.C. determines the ordinary place of inquiry and trial. However, looking

to the provisions contained in Sections 178, 179 and 181 (4) of the Cr.P.C., the vesting of jurisdiction in Vadodara Court can not be ruled out at this stage. When part of the cause of action alleged to have arisen within the local jurisdiction of Vadodara Court, when offence alleged is continuing one and its consequence ensued in Vadodara, when retention of stridhan is amounting to criminal breach of trust and when law says that a deserted wife residing with her parents immediately after separation or desertion is supposed to receive her properties from her in-laws smoothly and conveniently, it is difficult to pronounce any final verdict at this stage that the Vadodara Court has no jurisdiction to take cognizance of offence or to issue process. The Court is, therefore, not inclined to quash the complaint at this stage on the ground of lack of jurisdiction.

31.The second important ground on which the complaint is sought to be quashed is that the petitioners are not citizens of India and hence, as per the provisions contained in Section 4 of Indian Penal Code and Section 188 of Criminal Procedure Code, the trial Court has no jurisdiction to initiate any criminal proceedings against the petitioners. This submission or contention assumes somewhat significance only when the Court comes to the conclusion that no offence is committed by the petitioners in India. Here in the present case, it is yet to be decided as to whether petitioners are citizens of India. The defence raised and documents produced cannot be considered at this stage for the purpose of conclusively establishing the fact in either way that they are citizens of India or not. Moreover, averments made in the complaint

sufficiently disclose that part of the cause of action arose within the territorial jurisdiction of Vadodara Court. If it is so, Section 2 of Indian Penal Code empowers the Vadodara Court to take cognizance of offence committed by every person in India, irrespective of his nationality, allegiance, rank, status, caste, colour or creed. Admittedly, the present petitioners do not fall within the category of those persons specially exempt from criminal proceedings or punishment thereunder. Lastly, when the question of jurisdiction is not capable of conclusively decided at this stage, the Court is certainly weighed with the submission that the convenience is of the victim and not that of accused can be considered. The Court is further influenced by the fact that in the judgments relied upon by Mr. Pandya, the learned advocate appearing for the petitioners,

the question of jurisdiction is entertained by the Court to some extent and complaints were ordered to be returned to the complainants with a liberty to present the same before appropriate Court. But, in all those cases, the appropriate Courts are in India, whereas, in the present case, if the Court takes the view at this stage that Vadodara Court has no jurisdiction, there is no other Court in India which can take cognizance of the offence. The complainant would be compelled to approach the Foreign Court, which would virtually amount to driving her out without affording any chance or opportunity to establish her case before any Court of law in India. The Court is, therefore, of the view that the ends of justice would not meet with if such course is adopted by the Court.

32.Taking overall view of the matter and

considering the entire facts and circumstances of the case and further considering the scope and ambit of the exercise of powers of the Court under Section 482 of the Criminal Procedure Code and in furtherance of the true object of law to deliver justice to the sufferers or victims in the society, the Court does not entertain this petition at this stage. The petition, therefore, fails. Notice discharged. Interim relief granted earlier stands vacated.

33.Since the main petition fails, the application being Cri. Misc. Application No. 11546 of 2005 preferred by the respondent No. 2 for vacating interim relief does not survive. The same is accordingly disposed off.

[K.A. PUJ, J.]

34.After the judgment is pronounced, Mr. Nilesh Pandya, learned advocate appearing for the

petitioner has prayed for stay against the implementation, execution and operation of this judgment and has prayed that interim relief granted earlier by this Court may be extended till 13.01.2006. Mr. S.P. Majmudar, learned advocate appearing for the respondent No. 2 has, however, objected to continue stay in the matter. Having regard to the facts and circumstances of the case and considering the fact that the interim relief was granted earlier, the same is extended till 02.12.2005.

[K.A. PUJ, J.]

Savariya